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12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 TOYO TIRE HOLDINGS OF  
17 AMERICAS INC., a California  
18 corporation, as successor in interest to  
19 TOYO TIRE INTERNATIONAL,  
20 INC.,

21 Plaintiff,

22 vs.

23 CONTINENTAL TIRE NORTH  
24 AMERICA, INC., an Ohio corporation,  
25 as successor in interest to GENERAL  
26 TIRE, INC.; YOKOHAMA CORP. OF  
27 AMERICA, a California corporation;  
28 GTY TIRE CO., an Ohio general  
partnership; and DOES 1-100,  
inclusive,

Defendant.

CASE NO. SACV10-52-JVS (RNBx)

**Assigned for All Purposes to:**  
Hon. James V. Selna

**STIPULATED PROTECTIVE  
ORDER**

**Date: June 29, 2010**  
**Time: 10:00 am**  
**Courtroom: 10C**

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3 This Confidentiality Agreement and Stipulated Protective Order is hereby  
4 entered into by and between Claimant Toyo Tire Holdings of Americas Inc., as  
5 successor to Toyo Tire International, Inc. ("Toyo-US"), and Defendants Yokohama  
6 Corporation of America ("Yokohama-US"), Continental Tire North America, Inc., as  
7 successor to General Tire, Inc. ("Continental-US"), and GTY Tire Co. ("GTY")  
8 (collectively, Yokohama-US, Continental-US, and GTY shall be referred to herein as  
9 "Defendants"), through their respective counsel of record.

10 The action Toyo Tire Holdings of Americas, Inc. v. Continental Tire North  
11 America, Inc. ("the Litigation") may require the disclosure of information, either  
12 documentary or testimonial or both, that is regarded by the producing party as  
13 confidential and/or private information that may incorporate or contain proprietary  
14 data, trade secrets, other valuable or commercially sensitive information, and/or relate  
15 to confidential and private information concerning parties, witnesses, and persons that  
16 may not be a party to the Litigation. To protect the documents and information  
17 produced during the course of this Litigation, Claimant Toyo-US and Defendants  
18 (collectively, the "Parties") hereby agree to the following Order.

19 It is hereby agreed and ordered that each Party to this Litigation, as well as  
20 anyone else who subsequently may subscribe to this Protective Order (by execution  
21 of the CONFIDENTIALITY UNDERTAKING attached hereto as Appendix A  
22 ("Confidentiality Undertaking"), (collectively, the Parties and everyone who executes  
23 a Confidentiality Undertaking shall be deemed "Bound Parties"), shall be bound by  
24 this Protective Order as follows:

25 PROTECTED INFORMATION

26 1. This Protective Order shall govern all materials generated in this  
27 Litigation, including but not limited to the following: all submissions to the  
28 Tribunal, all correspondence between or among the parties, all documents, affidavits,

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2 motions, all Tribunal rulings (including but not limited to interim and final awards),  
3 data and information produced in discovery, answers to interrogatories, depositions  
4 and deposition exhibits, and responses to requests for admission (collectively,  
5 “Litigation Information”). The fact that a particular type of discovery is mentioned  
6 does not indicate that such discovery is agreed to among the parties.  
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8         2. Litigation Information designated for protection under this Protective  
9 Order shall be designated as (a) CONFIDENTIAL or (b) ATTORNEYS’ EYES  
10 ONLY by the entity or individual producing it (“Producing Party”) prior to disclosing  
11 it to the entity or individual receiving it (“Receiving Party”), and any documents or  
12 information derived therefrom shall be used solely for purposes of this Litigation and  
13 may not be used for any other purpose whatsoever, including but not limited to any  
14 business or commercial purpose, for dissemination to the public, government or  
15 media, or in any other litigation or investigatory proceeding. Litigation Information  
16 designated as CONFIDENTIAL or ATTORNEYS’ EYES ONLY constitutes  
17 “Protected Information” under this Order. For the purposes of this Order, the  
18 “Litigation” includes any proceeding to confirm or enforce an award.

19         3. The “CONFIDENTIAL” designation may be applied to Litigation  
20 Information that the Producing Party reasonably and in good faith determines to  
21 constitute commercially sensitive mater which if disclosed would damage the  
22 Producing Party or unfairly advantage any third party, including such information  
23 generated in connection with this Litigation, including, but not limited to the  
24 following: all submissions to the tribunal and communications to the other parties,  
25 motions, deposition and hearing transcripts, documents created for the Litigation or  
26 produced in this proceeding either by a party to the Litigation or a third party, a final  
27 award, all reasoned decisions, any interim decisions or awards, all correspondence  
28 between or among the parties, oral discussions, or other information exchanged in  
connection with this Litigation. As used herein, the term “documents” shall be

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2 broadly construed to include information that is recorded in any form, including, but  
3 not limited to, hard copy, electronically stored information, and audio and video  
4 recordings. Unless otherwise specified, the “CONFIDENTIAL” or  
5 “CONFIDENTIAL INFORMATION” designation shall apply to all materials  
6 generated in connection with this Litigation regardless of whether a  
7 “CONFIDENTIAL” or “CONFIDENTIAL INFORMATION” legend is affixed to  
8 any particular documents and/or information.

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10 4. The “ATTORNEYS’ EYES ONLY” designation may only be used for  
11 Litigation Information that the Producing Party reasonably and in good faith  
12 determines to constitute confidential and highly sensitive technical, technical  
13 development, financial, or business information the disclosure of which could result  
14 in irreparable financial injury or the reduction in the Producing Party’s competitive  
15 advantage in the marketplace, including but not limited to trade secrets, information  
16 relating to unpublished patent applications, non-public financial or pricing  
17 information, information or documents that relate to products under development,  
18 product supplier and sourcing information, and contracts or business arrangements  
19 with entities that are not parties to this Litigation.

#### 20 DESIGNATING AND HANDLING CONFIDENTIAL MATERIAL

21 5. To designate and categorize written Litigation Information as  
22 “CONFIDENTIAL”, no additional marking is required – all Litigation Information is  
23 automatically deemed “CONFIDENTIAL” with or without such designation.

24 6. Confidential Information designated pursuant to Paragraph 5 may be  
25 disclosed only to the following persons, each of whom shall be deemed a “Receiving  
26 Party,” except upon the prior written consent of the Producing Party:

27 (a) Attorneys from any law firm that is counsel of record for any Bound Party in  
28 this Litigation, and in-house counsel for any Bound Party.

(b) The Bound Parties;

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- 2 (c) Witnesses who may or will testify at deposition, trial or otherwise in this
- 3 Litigation and who have executed a Confidentiality Undertaking prior to disclosure;
- 4 (d) Independent consultants and experts, to the extent disclosure is necessary for
- 5 their services in connection with this Litigation, provided that such consultants and
- 6 experts have executed a Confidentiality Undertaking prior to disclosure;
- 7 (e) Outside contractors hired by any of the parties designated in 5(a), (b), (c), and
- 8 (d) to copy, index, sort, or otherwise manage the storage and retrieval of Litigation
- 9 Information, provided that such outside contractors have agreed in writing to keep
- 10 confidential any Confidential Information to which they have access;
- 11 (f) Secretarial, clerical and legal assistants working under the supervision of the
- 12 parties designated in Paragraphs 5(a), (b), (c), and (d) assigned to and necessary to
- 13 assist in the conduct of this Litigation;
- 14 (g) Any other individual that the document clearly identifies as an author,
- 15 addressee, or copy recipient;
- 16 (h) Court reporters and videographers who record and/or transcribe deposition or
- 17 other testimony in this Litigation;
- 18 (i) The ICC Secretariat, the Tribunal and staff assisting members of the Tribunal;
- 19 and
- 20 (j) Any other entity or individual designated by a further order of the Tribunal to
- 21 receive Confidential Information.

22 **DESIGNATING AND HANDLING ATTORNEYS' EYES ONLY MATERIAL:**

23 7. To designate and categorize written Litigation Information as Attorneys'

24 Eyes Only Information, the Producing Party shall stamp or otherwise mark

25 "ATTORNEYS' EYES ONLY" on each page of such Litigation Information.

26 8. The information designated as ATTORNEYS' EYES ONLY pursuant to

27 Paragraph 7 may be disclosed only to the following persons, each of whom shall be

28 deemed a "Receiving Party," except upon the prior written consent of the Producing

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2 Party:

3 (a) Attorneys from outside counsel of record for any Bound Party in this  
4 Litigation, but not in-house counsel for any Bound Party except for George Jurch and  
5 Jack Lasater, with the understanding that Defendants have committed that Mr. Jurch  
6 and Mr. Lasater shall not be witnesses in Defendants' case in the District Court  
7 proceedings or the ICC Arbitration, and shall not offer testimony by declaration or  
8 otherwise in support of Defendants' case.

9 (b) Independent consultants and experts, to the extent disclosure is necessary for  
10 their services in connection with this Litigation, provided that such consultants and  
11 experts have executed a Confidentiality Undertaking prior to disclosure;

12 (c) Outside contractors hired by any of the parties designated in Paragraphs 7(a) or  
13 7(b) to copy, index, sort, or otherwise manage the storage and retrieval of Litigation  
14 Information, provided that such outside contractors have been advised orally or in  
15 writing of the ATTORNEYS' EYES ONLY designation and have agreed in writing  
16 to keep confidential any ATTORNEYS' EYES ONLY Information to which they  
17 have access;

18 (d) Secretarial, clerical and legal assistants working under the supervision of the  
19 parties designated in Paragraphs 7(a) and (b) assigned to and necessary to assist in the  
20 conduct of this Litigation;

21 (e) Any other individual that the document clearly identifies as an author,  
22 addressee, or copy recipient;

23 (f) Court reporters and videographers who record and/or transcribe deposition or  
24 other testimony in this Litigation;

25 (g) The ICC Secretariat, the Tribunal and staff assisting members of the Tribunal;  
26 and

27 (h) Any other person designated by a further order of the Tribunal to receive  
28 ATTORNEYS' EYES ONLY Information.

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3 9. To control the proliferation of “ATTORNEYS’ EYES ONLY”  
4 Information, without prior written approval from the Producing Party, no Receiving  
5 Party shall make more than four (4) copies of any document that has been identified  
6 as “ATTORNEYS’ EYES ONLY.” Specifically, with respect to any information that  
7 has been identified as a trade secret and has been designated as “ATTORNEYS’  
8 EYES ONLY,” such trade secret information shall be stored and kept in the office of  
9 outside counsel on whom such information was produced, under lock and key. In  
10 addition, the reviewing party shall keep a log that identifies the date, time, and  
11 person(s) who may access such trade secret information. For purposes of this  
12 paragraph “trade secrets” shall be defined to include formulas, practices, designs,  
13 patterns, techniques, programs, and/or compilations that are not generally known to  
14 the public, but confer some sort of economic benefit on the holder, and are the subject  
15 of reasonable effort to maintain its secrecy, as set forth in Ohio Commercial Code §  
16 1333.61(D).

17 10. If it becomes necessary for counsel for a party possessing  
18 “ATTORNEYS’ EYES ONLY” Information to disclose it to some other person(s) not  
19 identified in paragraph 8(a)-8(h) to properly prepare for a proceeding in connection  
20 with this Litigation, or to evaluate the facts, claims, and defenses for purposes of  
21 discussing settlement of this Litigation, the following procedures shall be employed:

22 a. In the event that counsel for any party desires to disclose “ATTORNEYS’  
23 EYES ONLY” Information to some other person(s) not identified in paragraph 8(a)-  
24 8(h), counsel for the party intending to disclose such information shall notify, in  
25 writing by either e-mail and by overnight delivery or fax, counsel for the party which  
26 produced such “ATTORNEYS’ EYES ONLY” Information of the intent to disclose  
27 such information and shall describe with specificity the precise documents, things,  
28 and/or information that is sought to be disclosed (as well as to identify the person(s)  
to whom such disclosure is intended, when the disclosure is planned, and the general



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2 purpose of the disclosure), such that the party that produced the “ATTORNEYS’  
3 EYES ONLY” Information may determine whether an objection to disclosure is  
4 appropriate. The Parties agree to meet and confer on any proposed disclosure within  
5 five (5) business days.

6 b. After the completion of the meet and confer process and before disclosing any  
7 “ATTORNEYS’ EYES ONLY” Information, counsel for the disclosing party shall  
8 serve upon opposing counsel an undertaking in the form attached hereto as Appendix  
9 A, whereby the person(s) intended to receive such documents, things, and/or  
10 information shall agree to comply with the terms of this Protective Order and to be  
11 bound by the same.

12 c. If the opposing party objects to such disclosure, the party seeking disclosure  
13 may bring before the Tribunal the question of whether the particular “ATTORNEYS’  
14 EYES ONLY” Information can be disclosed to the designated person(s) and the party  
15 requesting such disclosure shall have the burden of establishing before the Tribunal  
16 the necessity for such disclosure.

17 d. With respect to any witness, any proposed disclosure of “ATTORNEYS’  
18 EYES ONLY” Information shall be limited to that information necessary for the  
19 witness’s consultation work or preparation to testify

20 11. For purposes of Paragraphs 5 through 8, information produced or  
21 provided on a computer disk, data tape or other medium that has not been reduced to  
22 paper form may be designated as CONFIDENTIAL or ATTORNEYS’ EYES ONLY  
23 by informing all Parties in writing that the computer disk, data tape or other medium  
24 contains CONFIDENTIAL or ATTORNEYS’ EYES ONLY information. Because of  
25 the restrictions on use of ATTORNEYS’ EYES ONLY information, a Producing  
26 Party must indicate in writing which documents or data are ATTORNEYS’ EYES  
27 ONLY either by segregating the documents on to a disk, data tape or other medium  
28 with an appropriate label, by labeling or branding the document itself or providing a



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2 list of such documents.

3 CHALLENGING CONFIDENTIALITY DESIGNATION:

4 12. A Bound Party shall not be obligated to challenge the propriety of a  
5 designation of Litigation Information as Protected Information under this Protective  
6 Order at the time made, and the failure to do so shall not preclude a subsequent  
7 challenge. If at any time a Receiving Party objects to a designation of information as  
8 ATTORNEYS' EYES ONLY ("Objecting Party"), the Objecting Party shall notify  
9 the Producing Party in writing of its request to have the designation modified or  
10 withdrawn ("Challenge Notice") within ten (10) business days of receipt of the  
11 Litigation Information so designated. The Challenge Notice shall identify the  
12 Litigation Information in question, and shall specify in reasonable detail the reason or  
13 reasons for the objection. Within ten (10) business days of the receipt of a Challenge  
14 Notice, the Producing Party shall respond in writing to the Objecting Party, either  
15 withdrawing the designation, setting forth in reasonable detail the reasons why the  
16 Producing Party believes the Litigation Information is entitled to the designated  
17 status, or modifying the designation and setting forth in reasonable detail the reasons  
18 why the Producing Party believes the Litigation Information is entitled to a modified  
19 designation. If not satisfied, the Objecting Party may move the Tribunal for an order  
20 stating a different designation for the Litigation Information within ten (10) business  
21 days of receiving from the Producing Party the justification for the designation. The  
22 Litigation Information that is the subject of such a motion shall be treated in  
23 accordance with its original designation until the Tribunal makes a final ruling on the  
24 motion. The burden shall be on the Producing Party defending that designation to  
25 establish the validity of the designation.

26 JURISDICTION:

27 13. Each Bound Party hereby agrees to subject himself/herself/itself to the  
28 jurisdiction of the Tribunal for the purpose of any proceedings relating to the

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2 performance under, compliance with, or violation of, this Protective Order. If a  
3 Bound Party breaches its obligations in connection with this Order after the Tribunal  
4 issues a final award, then the aggrieved party may apply to any court of competent  
5 jurisdiction for relief in connection with the alleged breach of this Order.  
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7 14. Each Bound Party hereby agrees that in the event any Litigation  
8 Information is disclosed is disclosed or has been disclosed to any person other than in  
9 the manner authorized by this Order, the person responsible for the disclosure shall  
10 immediately bring all pertinent facts relating to such disclosure to the attention of  
11 counsel for the producing party, orally and in writing, and, without prejudice to any  
12 other rights and remedies of the parties, make every effort to prevent further  
13 disclosure by it or by the person who was the recipient of such information.  
14 Furthermore, the disclosing party must immediately notify the opposing party, in  
15 writing, of what affirmative steps have been taken to prevent further disclosure by the  
16 disclosing party and by the person who was the recipient of such information. If the  
17 party whose information was disclosed determines that the proposed remedies are not  
18 sufficient, counsel shall immediately meet and confer to identify the best available  
19 cure for the inadvertent disclosure.

20 15. Each Bound Party hereby agrees that damages resulting from any breach  
21 of this Order would be extremely difficult or impracticable to determine. In  
22 acknowledgment of these and other facts, and the irreparable harm that would result  
23 from any breach to the opposing party, all Parties agree that in the event of a breach  
24 of any of the provisions of this Order, the party responsible for such breach shall be  
25 liable to the other party or Parties for whatever injunctive relief or other remedies that  
26 may be appropriate. In further acknowledgment of the foregoing, all parties agree  
27 that injunctive relief is an appropriate and necessary remedy for any breach or  
28 reasonably foreseeable breach of any of the provisions of this Order.

DEPOSITIONS AND PROCEEDINGS BEFORE TRIBUNAL:

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3       16.    Testimony or other material disclosed or to be disclosed at any  
4 deposition or during a proceeding before the Tribunal (“Tribunal Proceeding”) may  
5 be designated and categorized under Paragraphs 3, 4, and 5 by any Bound Party by  
6 (a) indicating on the record at the deposition or during the Tribunal Proceeding that  
7 the testimony or other material is designated as CONFIDENTIAL or ATTORNEYS’  
8 EYES ONLY under this Protective Order; (b) notifying all Parties in writing of such  
9 designation prior to the deposition or Tribunal Proceeding; or (c) by making such a  
10 designation, in writing to all Parties, within until thirty (30) calendar days from the  
11 earlier of the date that the transcript is first available for review by the witness or the  
12 date that the preliminary transcript is sent to counsel, if ordered. Any such  
13 designation must be pursuant to the standards set forth in Paragraphs 1, 3 and 4 of  
14 this Protective Order. In the event of a designation after a deposition pursuant to  
15 clause (c) of this Paragraph, the deposition transcript or portion thereof designated  
16 pursuant to clause (c) shall be considered “CONFIDENTIAL” or “ATTORNEYS’  
17 EYES ONLY” at and after the time of designation, and any disclosure prior to such  
18 designation shall not be a violation of this Order. The court reporter shall designate  
19 and categorize those portions of deposition and Tribunal Proceeding transcripts that  
20 are considered by the designating party to be Protected Information with an  
21 appropriate legend under Paragraph 5 and shall separate portions of transcripts and  
22 exhibits that contain Protected Information from those portions of transcripts and  
23 exhibits that do not.

24       17.    In the event that any question is asked at a deposition or at a Tribunal  
25 Proceeding with respect to which a Party asserts that the answer requires the  
26 disclosure of Protected Information, such question shall nonetheless be answered by  
27 the witness fully and completely. Prior to answering, however, all persons present --  
28 other than those who are persons covered by Paragraphs 6 and 8 of this Protective  
Order -- shall be advised of and shall agree to the terms and conditions of the

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2 Protective Order and, at the request of the Producing Party, all persons, other than the  
3 witness and the witness' counsel, who are not allowed to obtain such information  
4 pursuant to this Protective Order shall leave the room during the time in which this  
5 information is disclosed.

6 PRODUCTION BY THIRD PARTIES:

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8 18. Any third party producing confidential information in connection with  
9 this Litigation and who has executed a Confidentiality Undertaking shall have the  
10 right to designate the third party's own information as Confidential Information or  
11 Attorneys' Eyes Only Information subject to the terms of this Protective Order, and to  
12 the extent that any third party thus produces information subject to the terms of this  
13 Protective Order, the Bound Parties agree to treat the third party's Protected  
14 Information in accordance with the terms of this Protective Order.

15 INADVERTENT MISDESIGNATION:

16 19. In the event that a Producing Party discovers that Protected Information  
17 inadvertently has been produced without being marked with the appropriate  
18 designation, the Producing Party may thereafter notify the Receiving Party and  
19 require the Receiving Party either to retrieve and return to the Producing Party or else  
20 destroy any unmarked or incorrectly marked material, with the Producing Party then  
21 substituting appropriately marked material to the Receiving Party, provided (i) the  
22 Producing Party initially has taken reasonable measures to identify and designate the  
23 subject material, and (ii) the Producing Party notifies the Receiving Party promptly  
24 after learning of such inadvertent designation. The Receiving Party shall have no  
25 liability with respect to any prior disclosure or use of such Litigation Information that  
26 is consistent with the terms of this Protective Order.

27 INADVERTENT PRODUCTION:

28 20. If a Producing Party discovers that it has produced information subject to  
the attorney-client privilege and/or the work product doctrine to a Receiving Party

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2 inadvertently, then the Producing Party shall be entitled to request the immediate  
3 return of such information, provided: (i) the Producing Party initially has taken  
4 reasonable measures to identify and withhold materials subject to such a claim, and  
5 (ii) the Producing Party notifies the Receiving Party promptly after learning of such  
6 inadvertent production. Upon notification from the Producing Party that an  
7 inadvertent production has been made, together with identification of the material at  
8 issue and the nature of the claim being asserted, the Receiving Party immediately  
9 shall either retrieve and return to the Producing Party or else destroy all copies of  
10 such information and the Receiving Party thereafter shall make no use of any kind of  
11 any information obtained therefrom. However, the Receiving Party shall have no  
12 liability with respect to any prior good faith disclosure or use of such information that  
13 is consistent with the terms of this Protective Order. Nothing herein shall prevent the  
14 Receiving Party from challenging, by motion, the propriety of the assertion of  
15 attorney-client privilege or work product immunity.

16 INADVERTENT DISCLOSURE:

17 21. In the event of an inadvertent disclosure by a Receiving Party of  
18 Protected Information, the Receiving Party making the inadvertent disclosure shall,  
19 upon learning of the disclosure:

20 (i) immediately notify the entity or individual to whom the disclosure was  
21 made that the disclosure contains Protected Information subject to this Protective  
22 Order;

23 (ii) immediately make all reasonable efforts to recover the disclosed  
24 Protected Information as well as preclude further dissemination or use by the entity or  
25 individual to whom the disclosure was made; and

26 (iii) immediately notify the Producing Party of the identity of the entity or  
27 individual to whom the disclosure was made, the circumstances surrounding the  
28 disclosure, and the steps taken to recover the Protected Information and ensure

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2 against the further dissemination or use of the Protected Information.

3 TERMINATION:

4 22. In the event any person or party ceases to be engaged in the conduct of  
5 this Litigation, such person's or party's access to any and all Confidential and  
6 Attorneys Eyes Only Information shall be terminated, and all copies thereof shall be  
7 returned or destroyed by such party or person in accordance with the terms of  
8 Paragraph 27, except that such return or destruction shall take place as soon as  
9 practicable after such person or party ceases to be engaged in the conduct of this  
10 Litigation. This Paragraph shall not be construed to require the return or destruction  
11 of any regularly maintained litigation files held by the attorneys for each Case Party  
12 as archival records or other attorney work-product created for any Case Party. Any  
13 Protected Information, or portions or excerpts thereof, which are not destroyed or  
14 returned pursuant to this Paragraph, shall remain subject to the terms of this  
15 Protective Order.

16 MISCELLANEOUS PROVISIONS:

17 23. All Protected Information produced in this Litigation only shall be used  
18 in connection with the preparation, trial, and appeal, if any, of this Litigation, and  
19 shall not be used for any other purpose.

20 24. No Litigation Information shall be Protected Information if it is, or  
21 becomes, widely available as a matter of public record through the actions of the  
22 Producing Party, or is, or previously has been, otherwise intentionally disclosed to the  
23 public at large by the Producing Party.

24 25. This Protective Order pertains only to Litigation Information provided  
25 by a Producing Party and does not limit the use or disclosure of materials that have  
26 been obtained by any Bound Party from any other source lawfully possessing such  
27 information and not in violation of any obligation of confidentiality with respect  
28 thereto.

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3       26. Notwithstanding the designation of any material as “ATTORNEYS’  
4 EYES ONLY,” the Parties reserve their right to seek relief regarding material that  
5 they believe was wrongfully or illegally obtained, including, but not limited to, the  
6 return of the material and/or damages for misappropriation or unauthorized use.

7       27. After the final disposition of this Litigation, whether by settlement,  
8 dismissal with or without prejudice, termination of a proceeding to confirm an  
9 Litigation award, or expiration of the time allotted to commence a proceeding to  
10 confirm an award (“Final Disposition”), and within thirty (30) calendar days of a  
11 request by the Producing Party, all Receiving Parties shall, at their election, either  
12 return all Protected Information and all copies thereof to the Producing Party or  
13 destroy all Protected Information and all copies thereof. Within ten (10) days after  
14 the Final Disposition, the Bound Parties shall produce to all Case Parties all  
15 Confidentiality Undertakings executed under this Protective Order, except for those  
16 executed by non-testifying experts and non-testifying consultants. All Receiving  
17 Parties shall certify, to the best of their knowledge after reasonable inquiry, the return  
18 or destruction by affidavit or signed letter furnished to the Producing Party. This  
19 Paragraph shall not be construed to require the return or destruction of any regularly  
20 maintained litigation files held by the attorneys for each Case Party as archival  
21 records or other attorney work-product created for any Case Party. Any Protected  
22 Information, or portions or excerpts thereof, which are not destroyed or returned  
23 pursuant to this Paragraph, shall remain subject to the terms of this Protective Order.

24       28. If a Receiving Party receives a subpoena or other form of compulsory  
25 process from a third party seeking production or other disclosure of Protected  
26 Information, it immediately shall give written notice to the Producing Party that  
27 designated the Protected Information, specifying the Protected Information sought by  
28 the third party and enclosing a copy of the subpoena or other form of compulsory  
process. In no event shall production or disclosure be made before twenty-one (21)



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2 calendar days after giving such notice to the Producing Party unless specifically  
3 ordered by a court.

4         29. This Protective Order shall not limit any Party from making any  
5 disclosure of Litigation Information as may be required as a matter of law or to any  
6 governmental or administrative authorities to whom disclosure may be required by  
7 law. In the event that a Receiving Party receives such a request for Litigation  
8 Information, it immediately shall give written notice to the Producing Party,  
9 specifying the Litigation Information sought and enclosing a copy of the request. In  
10 no event shall production or disclosure be made before twenty-one (21) calendar days  
11 after giving such notice to the Producing Party unless specifically ordered by a court.

12         30. Any Party at any time may make a motion requesting that the Tribunal  
13 modify this Protective Order to provide additional or different protection.  
14 Furthermore, Parties may, in the future, agree to modify this Protective Order as  
15 necessary.

16         31. This Protective Order shall be without prejudice to the right of any party  
17 to oppose production of any information on grounds other than confidentiality.

18         32. For this Litigation, this Protective Order shall govern discovery and  
19 Tribunal proceedings.

20         33. The treatment accorded Protected Information under this Protective  
21 Order shall survive the Final Disposition.

22         34. The disclosure of Litigation Information or its production for inspection  
23 in this Litigation shall not constitute an admission of its authenticity or of its  
24 admissibility in this Litigation. Nothing in this Protective Order shall bar or  
25 otherwise restrict any counsel for a Bound Party from rendering legal services to the  
26 Bound Party in connection with this Litigation; provided, however, that in rendering  
27 such legal services and in otherwise communicating with the Bound Party, the  
28 attorney shall not disclose the content or the source of any Protected Information

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2 unless the Bound Party is entitled to have access to the Protected Information  
3 pursuant to this Protective Order.  
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5 35. With respect to court filings, each Party shall apply to the Court for an  
6 order to seal any pleading, declaration, or other court filing which contains  
7 CONFIDENTIAL or ATTORNEYS' EYES ONLY material. The application shall  
8 contain a showing that the document in fact contains such protected information, and  
9 there shall be no presumption that a document contains such information,  
10 notwithstanding any other provision of this Order. A Party applying for sealing shall  
11 use its best efforts to segregate protected information from non-protected  
12 information. Within 72 hours of the grant of any application for sealing, the Party  
13 shall file a public redacted version of any declaration, memorandum of points and  
14 authorities, or other substantive pleading covered by the sealing order.  
15

16 IT IS SO ORDERED.

17  
18 Date: June 29, 2010



19 James V. Selna

20 United States District Court Judge  
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28

APPENDIX A

CONFIDENTIALITY UNDERTAKING  
OF \_\_\_\_\_

1. My name is \_\_\_\_\_. I declare under penalty of perjury of the laws of the United States of America that I have read the Stipulated Protective Order and Confidentiality Agreement (the “Protective Order”), concerning the confidentiality of information in the above-referenced Litigation. I understand that the Protective Order is a legally binding document designed to preserve the confidentiality of certain documents and/or information. I also understand that the Protective Order restricts the use, disclosure, and retention of confidential information and also requires the safeguarding and return of documents and other materials.

2. A copy of the Protective Order has been provided to me, and I have reviewed its terms and conditions. I agree to comply with all provisions of the Protective Order described above with respect to any “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” information or material. I hereby consent to jurisdiction in the above-referenced Litigation for any proceedings involving the enforcement of this Protective Order.

3. Without limiting the foregoing, I agree that I will not disclose or discuss any “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” information or material with any persons other than counsel for either party and paralegal and clerical personnel assisting such counsel, and other persons permitted access to such material under the Protective Order and who, pursuant to the provisions of the Protective Order, have signed undertakings under penalty of perjury undertaking to preserve the

1  
2 confidentiality of such material.

3 4. I agree to use any "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"  
4 information or material solely in connection with participation in this action and for  
5 no other purpose.  
6

7 I declare under penalty of perjury under the laws of the United States of America, that  
8 the foregoing is true and correct.

9 Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010, at \_\_\_\_\_, \_\_\_\_\_.  
10

11  
12  
13 Signature \_\_\_\_\_  
14

15 Name \_\_\_\_\_  
16

17 Street Address \_\_\_\_\_  
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19 City, State, and Zip Code \_\_\_\_\_  
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